

CENTRAL ADMINISTRATIVE TRIBUNAL.
JODHPUR BENCH: JODHPUR.

O.A. No.276/2001

Date of the decision: 3-3-2003

1. Bhoj Raj Gagnani, S/o Shri H.R.Gagnani, aged about 45 years resident of 7, Customs Colony, Ratanada, Jodhpur, at present employed on the post of Superintendent Technical, Custom Division, JODHPUR.
2. S.N.B.Sharma, s/o Shri Bansi Lal Sharma, aged about 48 years, resident of 13, Golf Course, Air Force Area, Jodhpur, at present employed on the post of Superintendent Preventive, Central Excise Division, Jodhpur.

:Applicants.



versus

Union of India through Secretary, to Government of India, Ministry of Finance, Deptt. of Revenue, North Block, New Delhi.

Commissioner, Cadre Control Unit, Central Excise Commissionerate, Jaipur-I Statute Circle, C-Scheme, Jaipur.

3. The Member (Personnel), Central Board of Excise and Customs, North Block, New Delhi.
4. Shri Man Singh, Assistant Commissioner, Central Excise, Indore.
5. Shri Makhan Lal Meena, Assistant Commissioner, Central Excise, Chittorgarh.
6. Shri H.C. Verma, Assistant Commissioner Customs, Inland, Container Depot, Tuglakabad, New Delhi.

:Respondents.

Mr. B.Khan: Counsel for the applicants.

Mr. Vinit Mathur: Counsel for respondents 1 to 3

Mr. S.K.Malik: Counsel for respondent No. 5

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.P.Nagrath, Administrative Member.

ORDER

Per Mr. Justice G.L.Gupta:

The reliefs claimed in this O.A. are these:

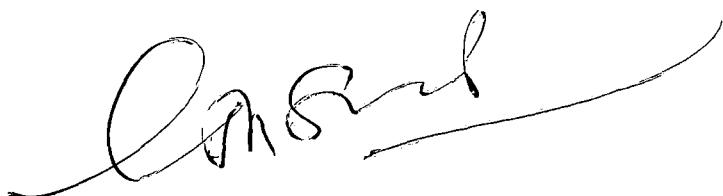
(i) "the respondents no. 1 to 3 may be directed to review the seniority of the applicants vis-a-vis respondents No. 4 to 6 on the post of Superintendent and assign their due seniority over respondents 4 to 6 in the said grade/post from the dates of applicants' promotion i.e. 20.3.91 and 18.6.90, respectively and also grant of pay equal to the pay granted to these respondents at the relevant time. (As per the verdict of Hon'ble Supreme Court in Juneja II and M.G. Badappanavar cases and allow all the consequential benefits.)

the respondents may be further directed to consider promotion of the applicants to the post of Assistant Commissioner from the date of his next junior reserved candidate (respondent No. 4) was promoted on the basis of accelerated seniority after 1.3.96/1.4.97 on the feeder post and also assignment of due seniority over respondents 4 to 6 etc on the said higher post at par with his next junior(s) as per the verdict of Hon'ble Supreme Court in Juneja II and M.G. Badappanavar cases and allow all consequential benefits.

(iii) that any other direction, or orders may be passed in favour of the applicants which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iv) that the costs of this application may be awarded."

2. The applicants' case, in brief, is that they were senior to private respondents 4,5 and 6 in the basic grade and respondents 4,5 and 6 had been given promotion to the post of Superintendent before the promotion of the applicants because of reservation policy but when the applicants also got promotion to the post of Superintendent, the seniority list of the Superintendents ought to have been revised and on the basis of revised list promotion ought to have been given to the post of Assistant Commissioner. It is stated that the private respondents who had got accelerated promotion have been given further promotion to the post of Assistant Commissioner,



whereas the applicants ought to have been given promotion to the post of Assistant Commissioner before the promotion of the private respondents in the years 1997 and 1998. In other words the case for the applicants is that based on the decision of the Hon'ble Supreme Court in Ajit Singh II vs. State of Punjab and the DOPT orders dated 30.1.97 and 21.3.97.

3. In the counter, the respondents' have resisted the claim of the applicants on number of grounds. Inter alia it is stated that the applicants were not entitled to regain the seniority because of the DOPT O.M. dated 21.1.2002 and the amendment made in the Constitution of India. It is also stated that the applicants could not regain the seniority and the private respondents being senior to the applicants were rightly considered for promotion to the post of Assistant Commissioner.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The learned counsel for the respondents raised preliminary objections that this O.A having not been filed within the period of limitation, should be dismissed as barred by limitation.

6. The learned counsel for the applicant contended that in view of the Government orders issued in the year 1997, and the decision rendered by the Hon'ble Supreme Court in Ajit Singh's case it was the duty of the official respondents to have re-cast the seniority and the applicants being senior in the basic grade, were entitled to be considered for promotion to the post of Assistant Commissioner before the promotion of the private respondents.



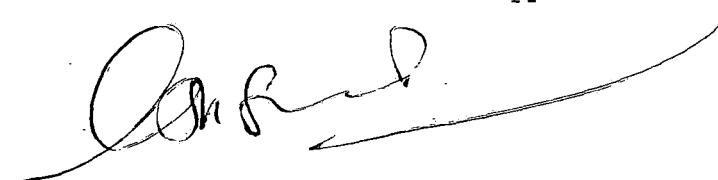
7. On the other hand the learned counsel for the respondents contended that in view of the amendment made in the Constitution of India and the DOPT OM dated 21.1.2002, the applicants cannot claim seniority over private respondents in the basic grade.

8. We have given the matter our thoughtful consideration. It is noticed that the DOPT had issued order dated 30.1.97 on the basis of the decision rendered in the case of Union of India vs. Vir Pal Singh Chauhan wherein it was directed that the earlier promotion SCs/STs candidates on the basis of roster, would not confer on them a right of seniority over general category candidates, even if the general category candidates are promoted later in time. In the OM dated 21.3.97 it was directed that the candidates belonging to general/OBC category would regain their original seniority over the earlier promoted SCs/STs in the next grade., by virtue of OM dated 30.1.97.

9. It appears that the applicant No. 1 did not make any representation for the grant of benefit of the OMs of January and March 1997. The applicant No. 2 did make representation on 21.4.97 (Annex A.4)

This O.A was filed on 18.9.2001. Applicant No. 2 also did not approach this Tribunal within the period of limitation prescribed under Sec. 21 of the Administrative Tribunals Act. 1985.

There may be substance in this contention that the cause of action arose to the applicants when the Hon'ble Supreme Court rendered the decision on 16.9.99 in the case of Ajit Singh II. However, this O.A has not been filed within one year from that date also. It is not the case for the applicants that they had made



representations for giving them relief in terms of the judgement of the Hon'ble Supreme Court dated 16.9.99.

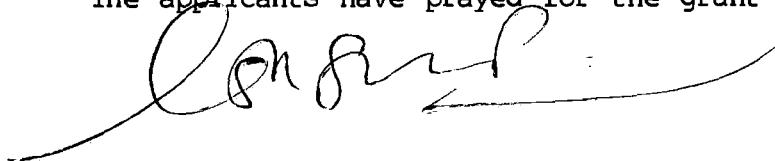
It is thus evident that the present O.A has not been filed within the limitation period prescribed under Sec. 21 of the Administrative Tribunals Act 1985.

10. It is now settled legal position that if an employee is aggrieved by an order of the authority and he does not approach the Tribunal within the time prescribed under Sec. 21 of the A.T. Act, 1985, he cannot get relief unless an application for condonation of delay is filed. The applicants in the instant matter have not filed any application for condonation of delay. That being so, the O.A is liable to be dismissed on the ground of limitation alone.

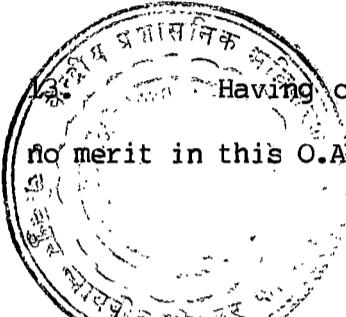
11. Even on merits, the applicants cannot succeed in view of the subsequent developments. The Parliament has made an amendment in the Constitution whereby Art. 16 (4) (A) has been amended with effect from 17.6.95. The DOPT has issued OM dated 21.1.2002 (Annex. R.1), negating the effect of OM dated 30.1.97. It is provided in the OM dated 21.1.2002 that the OM shall take effect from 17.6.95. It has been made clear that the candidates belonging to General/OBC promoted later to the grade to which the candidates belonging to SCs/STs promoted earlier by way of rule of reservation, would rank junior to SCs/STs.

In view of the OM dated 21.1.2002, the applicants can hardly succeed on the basis of OM dated 30.1.97. Thus even on merits the applicants cannot succeed in this case.

12. The applicants have prayed for the grant of pay at par



with private respondents, on the principle of 'equal pay for equal work'. This cannot be done because of the OM dated 21.1.2002. The applicants shall rank junior to the private respondents and therefore they cannot claim pay at par with the pay of private respondents who are on the higher post.



Having considered the entire material on record, we find no merit in this O.A which is hereby dismissed.

14. No order as to costs.

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(A.P.Nagrath)

Administrative Member

G.L.Gupta
(G.L.Gupta)

Vice Chairman.

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